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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,672	09/30/2003	William Kress Bodin	AUS920030241US1	6744
34533 7590 05/30/2007 INTERNATIONAL CORP (BLF) c/o BIGGERS & OHANIAN, LLP P.O. BOX 1469 AUSTIN, TX 78767-1469			EXAMINER MANIWANG, JOSEPH R	
			ART UNIT 2144	PAPER NUMBER
			MAIL DATE 05/30/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/675,672	<b>Applicant(s)</b> BODIN ET AL.	
	<b>Examiner</b> Joseph R. Maniwang	<b>Art Unit</b> 2144	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 March 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>03/15/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statement (IDS) submitted on 03/15/04 was in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement was considered by the Examiner.

### ***Double Patenting***

2. Claims 1-20 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-24 of copending Application No. 10/675671 (U.S. Pat. App. Pub. 2005/0071462). Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant application claims subject matter covered by the claims of the copending application. For example, copending claim 1 is directed to receiving metrics and identifying a pattern in the metrics, and the instant application similarly claims receiving metrics (present claim 1) and identifying a pattern within the metrics (present claim 6). Other dependent claims of the instant application are also covered by copending application (compare present claim 2 and copending claim 2; copending claim 5 and instant claim 1). In short, an ordinary artisan supplied with the specification and claims of the copending application would have been enabled using ordinary skill in the art to construct the invention as presently claimed.

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3. Similarly, claims 1-20 are rejected in light of copending applications 10/692417 (U.S. Pat. App. Pub. 2005/0108405) and copending application 10/651724 (U.S. Pat. App. Pub. 2005/0050137).
4. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Cho et al. (U.S. Pat. No. 7,160,252), hereinafter referred to as Cho.
7. Regarding claims 1, 8, and 15, Cho disclosed a method and system comprising receiving, within the network, at least one user metric for a user (see column 3, lines 23-24; column 4, lines 60-67; column 6, lines 20-37; column 7, lines 1-23); receiving, from a device within the network, device content metadata (see column 3, lines 23-24; column 4, lines 60-67; column 6, lines 20-37; column 7, lines 1-23); identifying an action in dependence upon the user metric and the device content metadata (see column 5,

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lines 20-26; column 6, lines 9-19, 65-67); and executing the action within the network (see column 5, lines 20-26; column 6, lines 9-19, 65-67).

8. Regarding claims 2, 9, and 16, Cho disclosed the method and system wherein receiving, within the network, at least one user metric for a user comprises receiving at least one metric from a metric sensor worn by the user (see column 3, lines 18-19; column 4, lines 57-60; column 9, lines 27-58).

9. Regarding claims 3, 10, and 17, Cho disclosed the method and system wherein identifying an action in dependence upon the user metric and the device content metadata comprises retrieving an action ID from an action database in dependence upon the user content metadata and the user metric (see column 5, lines 20-26; column 6, lines 9-19, 65-67).

10. Regarding claims 4, 11, and 18, Cho disclosed the method and system wherein user content metadata comprises data embedded within a signal received by a device (see column 5, lines 1-11).

11. Regarding claims 5, 12, and 19, Cho disclosed the method and system wherein receiving device content metadata comprises receiving device content metadata from a first device and executing the action within the network administers a second device (see column 10, line 64 through column 11, line 19).

12. Regarding claims 6, 13, and 20, Cho disclosed the method and system wherein executing the action within the network comprises identifying a device class representing the device (see column 11, lines 27-54).

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13. Regarding claims 7 and 14, Cho disclosed the method and system wherein executing the action within the network comprises identifying a communication class for the device (see column 11, lines 27-54).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Siegel et al. (U.S. Pat. App. Pub. 2003/0084305)

McKenna et al. (U.S. Pat. App. Pub. 2004/0176991)

Willner et al. (U.S. Pat. No. 6,701,271)

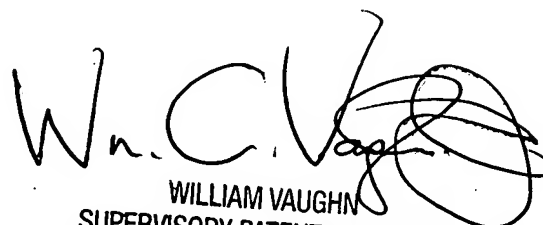
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph R. Maniwang whose telephone number is (571) 272-3928. The examiner can normally be reached on Mon-Fri 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William C. Vaughn can be reached on (571) 272-3922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JM

  
WILLIAM VAUGHN  
SUPERVISORY PATENT EXAMINER  
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